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**From:** Oakes, Matthew (ENRD) [Matthew.Oakes@usdoj.gov]  
**Sent:** 1/26/2022 11:05:55 PM  
**To:** Koch, Erin [Koch.Erin@epa.gov]; Aranda, Amber [aranda.amber@epa.gov]  
**CC:** Neumann, Jennifer Scheller (ENRD) [Jennifer.Neumann@usdoj.gov]; Titzler, Arley (ENRD) [Arley.Titzler@usdoj.gov]; McDonald, Chelsea (ENRD) [Chelsea.McDonald@usdoj.gov]  
**Subject:** Monsanto - alternate FIFRA theories

Hi Amber and Erin,

Following our conversation yesterday, Arley, Chelsea and I tried to brainstorm supportable preemption theories that were different than the one we endorsed in the United States' amicus brief. Below is my attempt to summarize four of the theories we briefly discussed in our call this afternoon. None of these theories are particularly well developed, but they serve as markers for different ways a court could view the FIFRA uniformity provision.

Jennifer, Arley, and Chelsea – please jump into the email chain if I misstated anything, or if additional information would help clarify our potential approach.

To start with, the FIFRA preemption provision says:

Such State shall not impose or continue in effect any **requirements for labeling or packaging** in addition to or different from **those required** under this subchapter.

7 U.S.C. § 136v(a)-(b) (emphasis added). If the interpretive goal was to try and preserve at least some state tort claims related to pesticides or herbicides, it seems to make sense to focus either on the first emphasized clause “requirements for labeling or packaging” or the second, “those required.”

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